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September 13, 2012

VIA HAND DELIVERY AND E-MAIL

Jeff S. Jordan, Supervisory Attorney
Federal Election Commission
Office of General Counsel
Complaints Examination & Legal Administration
999 E Street, NW
Washington, DC 20463

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Re: MUR 6616 – Friends of Tilley, LLC; Missouri Leadership Committee; and
Steelman for U.S. Senate, Inc.

Dear Mr. Jordan:

Please accept the following Response filed on behalf of Friends of Tilley, LLC ("FOT") with respect to MUR 6616 – the Complaint submitted to the Federal Election Commission ("FEC" or the "Commission") on July 23, 2012 by Ms. Elizabeth S. Frericks. For the reasons set forth in the Response, FOT does hereby request that the Commission either dismiss MUR 6616 in its entirety or, alternatively, make an affirmative determination that there is "no reason to believe" any violations have occurred in connection with the present matter.

Thank you in advance for your time and consideration of this request. Should the FEC have any questions regarding the Response or require additional information concerning the arguments or information presented therein, please do not hesitate to contact me by phone or e-mail.

Sincerely,



Stefan C. Passantino

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MUR No. 6616

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STEFAN C. PASSANTINO
MCKENNA LONG & ALDRIDGE LLP
Designated Counsel for
Friends of Tilley, LLC

Before the
FEDERAL ELECTION COMMISSION

In the matter of:

Friends of Tilley, LLC; Missouri Leadership
Committee; and Steelman for U.S. Senate, Inc.

MUR No. 6616

RESPONSE OF FRIENDS OF TILLEY, LLC

The following response ("Response") is submitted on behalf of Friends of Tilley, LLC ("FOT") with respect to the complaint (MUR No. 6616; the "Complaint") filed with the Federal Election Commission ("FEC" or the "Commission") on July 23, 2012 by Ms. Elizabeth S. Frericks. As discussed in greater detail within this Response, the Complaint authored by Ms. Frericks against FOT has no basis in either law or fact. Rather, it amounts to nothing more than a collection of baseless accusations against FOT and the other named parties in this matter that is designed to harm their political reputations and hamper their public policy goals. Based wholly on circumstantial and inconclusive data gathered from state campaign finance disclosure reports, haphazard internet research, and unsubstantiated political blogs, the Complaint audaciously asserts that FOT has engaged in behavior that warrants immediate investigation by the Commission and evidences a "general disregard" for the Federal Election Campaign Act of 1971 (the "Act"). Nothing could be further from the truth.

Upon review of the information contained in this Response, it should be readily apparent to the Commission that the factual inferences made by Ms. Frericks against FOT are erroneous, that no federal campaign finance violations have occurred, and that no further inquiry or investigation is required by the FEC. Furthermore, upon consideration of the so-called evidence

presented by the Complainant in this matter, it should be readily apparent to the Commission that there is no reasonable basis upon which to sustain the Complaint against FOT or any of the other named parties. In turn, FOT does hereby request that the Commission refrain from any further investigation of the claims articulated by the Complainant and summarily dismiss the instant Complaint. Moreover, because the allegations contained in the Complaint are so patently meritless on their face, FOT also respectfully requests that the FEC issue an Order obligating Ms. Frericks to reimburse Respondent those attorneys' fees it has incurred in conjunction with the preparation of the present Response.

I. Introduction

The contents of the present Complaint against FOT allege that it violated the Act and its associated regulations by coordinating with Steelman for U.S. Senate, Inc.¹ to channel or direct a donation from the Missouri Leadership Committee² ("MLC") to a federal independent-expenditure only political committee (Super PAC) in order to help Steelman for Senate gain improper direction or control over non-federal funds in violation of 11 C.F.R. § 300.61. (Complaint, p. 2-3). In support of these claims, Complainant sets forth a number of "facts" regarding the activities of FOT, MLC, and Steelman for Senate between 2010 and 2012 that she claims provide support for the accusations made. None of these facts, however, establish a reasonable basis upon which to believe a federal campaign finance violation has occurred. In fact, as is demonstrated fully below, each of the facts provided by Complainant is completely innocuous, and each of the claims advanced by Complainant against FOT is fundamentally false.

¹ Steelman for U.S. Senate, Inc. ("Steelman for Senate") is the principal federal campaign committee of former U.S. Senate candidate and current Missouri Secretary of State Sarah Steelman. Steelman for Senate is registered with the Commission under FEC ID C00491530.

² The Missouri Leadership Committee ("MLC") is a non-federal political action committee based in Farmington, Missouri that has as its principal purpose the support and election of state and local candidates across the State of Missouri. MLC is registered with the Missouri Ethics Commission ("MEC") under MEC ID No. C06141.

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At no time since the establishment of FOT has it or any of its agents directly or indirectly coordinated with MLC, Steelman for Senate, or any other political candidates or committees in order to facilitate the making of non-federal contributions or expenditures designed to influence the federal elections. In fact, throughout its existence, FOT has taken all relevant and necessary precautions to ensure that it remains in full compliance with applicable campaign finance laws and disclosure requirements. (See Declaration of John R. Crouch, ¶2, attached hereto as EXHIBIT #1). As such, any assertion that FOT has somehow violated the Act by improperly aiding Steelman for Senate is altogether inaccurate. Consequently, there is no foundation upon which to initiate an investigation of FOT or its activities, nor is there any reason to conclude that the Act, its implementing regulations, or any other laws have been violated.

II. Argument

A. Friends of Tilley, LLC Did NOT Coordinate With The Missouri Leadership Committee or Independently Aid the Steelman for Senate Campaign in Any Manner That Allowed It To Gain Improper Control Over Non-Federal Campaign Funds.

The sole allegation lodged against FOT in the present Complaint contends that it somehow participated in or assisted in the orchestration of an elaborate coordination scheme that permitted the Steelman for Senate campaign to exercise improper control over non-federal funds in violation of 11 C.F.R. § 300.61. The specifics of this particular claim are relatively difficult to discern from the language of the Complaint, but it appears that the Complainant believes a "financial relationship" existed between FOT and MLC that allowed Missouri House Speaker Steven Tilley and FOT to exercise "direction or control" over MLC and to coordinate its \$25,000 contribution to NONPAC for the benefit of Steelman for Senate. (Complaint, p. 2). In support of this contention, Complainant asserts that the "filings of Friends of Tilley and Missouri Leadership with the Missouri Ethics Commission clearly show Steven Tilley's direction or

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control of Missouri Leadership's funds through a coordinated exchange of hundreds of thousands of dollars between these two groups." (Id. at p. 3). Furthermore, Ms. Frericks claims that the "orchestrated coordination of contributions and 'returned' contributions between the Missouri committees, along with this arrangement being widely reported as fact in Missouri, clearly shows Steve Tilley's ability to control or direct the funds of both groups." (Id.). Based upon these assumptions, it is Complainant's contention that FOT violated 11 C.F.R. § 300.61 by helping the Steelman for Senate campaign exercise control over non-federal funds through either direct coordination with the campaign or indirect coordination via an intermediary such as MLC or Speaker Tilley.

Such an assertion by Complainant is wholly erroneous. In fact, this claim of wrongdoing is both patently false and unsupported by any legal or evidentiary foundation. The contents of this Response will not only confirm this fact, but also reveal that FOT has never directly coordinated with Steelman for Senate so as to allow the campaign to gain improper control over non-federal funds.³ Likewise, the information provided herein will also substantiate the fact that FOT has never indirectly coordinated with Steelman for Senate via an intermediary such as MLC or Speaker Tilley so as to permit the campaign to gain improper control over non-federal funds.⁴ Prior to confirming these points, however, it is important to set forth the legal parameters associated with the present allegation.

From a legal perspective, it is clear that the Act and its associated regulations prohibit federal candidates, federal officeholders, agents acting on behalf of federal candidates or

³ See EXHIBIT #1 for additional confirmation of the fact that FOT engaged in no coordination with Steelman for Senate or any agent or intermediary of Steelman for Senate with regard to the making of any contributions to NONPAC or the making of any independent expenditures by NONPAC.

⁴ Id.

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officeholders, and entities that are directly or indirectly established, finance, maintained, controlled by, or acting on behalf of federal candidates or officeholders from exercising control over funds that are not subject to the limitations, prohibitions and reporting requirements of the Act ("non-federal funds"). See 11 C.F.R. §§ 300.60 & 300.61; 2 U.S.C. §§ 441i(e)(1) & 441i(e)(1)(A). Specifically, none of the individuals or entities described above "shall solicit, receive, direct, transfer, spend, or disburse funds in connection with an election for Federal office, including funds for any Federal election activity ... unless the amounts consist of Federal funds that are subject to the limitations, prohibitions, and reporting requirements of the Act." 11 C.F.R. § 300.61; 2 U.S.C. § 441i(e)(1)(A). To put it simply, no federal candidate may receive or utilize non-federal funds in connection with his or her campaign, and no individual or entity acting on behalf of a federal candidate may direct or disburse non-federal funds in connection with an election for federal office.

The application of these provisions is fairly straightforward in the context of federal candidates and their principal campaign committees — federal candidates and campaign committees cannot receive, spend or disburse non-federal funds in connection with federal elections. Outside of the candidate and campaign committee context, however, the application of 11 C.F.R. § 300.61 and 2 U.S.C. § 441i(e)(1)(A) is somewhat more complicated. Although it is readily apparent that these provisions prohibit outside individuals and entities from directly soliciting non-federal funds on behalf of, or transferring non-federal funds to, federal candidates and campaign committees, the application of the above provisions to third parties that take indirect actions associated with federal elections requires close analysis. When determining whether a third-party is in compliance with 11 C.F.R. § 300.61 and 2 U.S.C. § 441i(e)(1)(A) in an indirection action setting, one must principally assess whether the individual or entity at issue

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is acting as a *direct agent* of or *on behalf* of a federal candidate or campaign committee. If an outside individual or entity is not acting in either capacity when soliciting, directing, transferring, spending, or disbursing non-federal funds in connection with a federal election, there can be no violation of the stated regulations.

In order to be a direct "agent" of a candidate or candidate committee, an individual or entity must have actual authorization, either express or implied, from a specific principal to engage in specific activities, and then engage in those activities on behalf of that principal. See 11 C.F.R. § 109.3(a) & (b). As such, a third-party individual or entity indirectly utilizing non-federal funds for a federal election must be acting under the actual authorization of a federal candidate or campaign committee in order to run afoul of 11 C.F.R. §§ 300.60 & 300.61 as an agent. Qualifying as an individual or entity acting *on behalf* of a federal candidate or campaign committee requires no such actual authorization, however. In fact, from a practical perspective, reaching a determination on whether an individual or entity is acting on behalf of a federal candidate or campaign committee when soliciting, directing, controlling or transferring non-federal funds essentially boils down to assessing whether the action taken was "coordinated" with a federal candidate or campaign committee.

In general, an action is coordinated in the campaign finance context if it is made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents. See 11 C.F.R. § 109.21. Determining whether an action fits this definition is a fact-specific inquiry focusing on the nature of the conduct undertaken by the third-party and the degree to which such conduct was directed by a federal candidate or campaign committee. When examining the conduct and its relationship to a federal candidate or campaign committee, it is appropriate to consider the following factors: (1)

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whether the conduct was planned or implemented *at the request or suggestion* of a federal candidate, candidate committee, or their agents; (2) whether a federal candidate, candidate committee, or agent of either was *materially involved* in decisions related to the planning or implementation of the third-party conduct; (3) whether the conduct was planned or implemented after one or more substantial discussions about the conduct between the third-party or its employees or agents and a federal candidate, candidate's committee, or their agents; (4) whether the conduct was planned or implemented with the assistance of or through an additional third party that is currently coordinating with a federal candidate, candidate committee, or their agents; and (5) whether the conduct is planned or implemented with *material assistance* from an employee of the third-party who was previously employed by the federal candidate or candidate committee benefitting from the conduct.⁵ If particular conduct by a third-party affirmatively meets any of the above standards, then the action can be categorized as coordinated. In instances where that is not the case, there is no coordination, and in turn, no contravention of federal law.

Although it is not explicitly stated in the Complaint, it appears to be Complainant's contention that FOT violated 11 C.F.R. § 300.61 by coordinating a monetary contribution to NONPAC, a federally-registered Super PAC, at the behest of Steelman for Senate and/or Speaker Tilley (in his capacity as Chair of the Steelman campaign). To this end, Complainant appears to theorize that FOT worked in conjunction with MLC, Speaker Tilley and the Steelman for Senate campaign to orchestrate a scheme whereby FOT funded MLC and directed it to make contributions to NONPAC for the express purpose of producing independent expenditure advertisements supporting Secretary of State Steelman's federal candidacy. The Complaint, however, offers zero credible evidence in support of either this general theory or any of the

⁵ See 11 C.F.R. § 109.21(d).

specific coordination allegations lodged against FOT. In fact, what has been presented to the Commission as "evidence" of improper coordination amounts to little more than a collection of unfounded conclusions derived from a set of innocuous facts.

For example, in the opening section of the Complaint, several pieces of data are highlighted as the key facts "giving rise to" the allegations against the named parties. (Complaint, p. 1). These particular informational items include the following: (1) the fact that Secretary of State Steelman chose Speaker Tilley to serve as the Campaign Chair of her U.S. Senate campaign; (2) the fact that FOT and MLC made a series of campaign contributions to one another in 2010 and 2012; (3) the fact that MLC made a \$25,000 contribution to NONPAC on May 31, 2012; and (4) the fact that media reports indicated that NONPAC planned on making independent expenditures concerning various U.S. Senate candidates leading up to the Missouri Republican primary on August 7, 2012. (*Id.* at p. 1-2). On their own, each of these particular facts is accurate.⁶ None of them, however, supports the wild conjecture included in the Complaint. Despite the arguments put forth by the Complainant, Speaker Tilley's role as Chair of the Steelman for Senate campaign does not provide evidence that either he or FOT was orchestrating an elaborate scheme to fund coordinated Super PAC advertisements with non-federal funds. Likewise, a history of legal campaign contributions by and between FOT and MLC does not substantiate claims that there was an improper "financial relationship" between the two entities or that Speaker Tillman and/or FOT somehow controlled the activities of MLC. Similarly, campaign finance reports disclosing MLC's \$25,000 contribution to NONPAC in ne

⁶ Each of these facts is correct on its face, but the characterization and use of these pieces of data in the present Complaint is wholly inaccurate. As such, the attached Declaration of Mr. John R. Crouch, Treasurer of FOT, has been provided as an exhibit for the Commission's reference. The information contained within this declaration should provide additional detail to the FEC as it considers the instant matter, and likewise clarify that Complainant's factual extrapolations are wholly inaccurate.

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way corroborate baseless claims that the contribution was somehow directed or controlled by FOT and/or Speaker Tilley and coordinated with Steelman for Senate. To put it simply, there is a fundamental disconnect between the overarching theory presented in the Complaint and the facts purported to back up that theory.

The reason for this disconnect is simple – there is absolutely no truth to the claim that FOT violated the Act or its associated regulations by helping the Steelman for Senate campaign gain improper control over non-federal campaign funds through any form of coordination with MLC, NONPAC, or Steelman for Senate. In order for FOT to run afoul of 11 C.F.R. § 300.61, it would have had to directly solicit or transfer non-federal funds to a federal candidate or campaign committee, or in the alternative, indirectly solicit, direct, transfer, spend, or disburse non-federal funds in connection with a federal election as an agent of, or on behalf of, a federal candidate or campaign committee. FOT's conduct with regard to the present matter meets none of these standards, and as such, there is no basis to entertain the validity of Complainant's present allegation. As is articulated further below, there has neither been direct action by FOT that would provide the Steelman for Senate campaign with improper control over non-federal funds, nor any other effort by FOT to coordinate with MLC, NONPAC, or Steelman for Senate in order to provide the Steelman campaign with indirect control over non-federal funds.

In support of these points, it is first and foremost readily apparent that FOT has never directly solicited non-federal funds for or transferred non-federal funds to a federal candidate or campaign committee. FOT is solely a non-federal candidate committee that neither accepts contributions for the benefit of federal candidates, nor makes direct contributions to or direct expenditures on behalf of federal candidates. (EXHIBIT #1, ¶4). In turn, FOT has never directly raised funds for or made direct monetary contributions to Steelman for Senate. This fact is

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corroborated not only by FOT's state campaign finance disclosures with the MEC, but also by the Complaint's total lack of evidence to the contrary. As such, there is absolutely no basis upon which to assert that FOT has violated 11 C.F.R. § 300.61 by raising non-federal funds for or donating non-federal funds to any federal candidate or campaign committee.

The emptiness of Complainant's assertions regarding FOT are also confirmed by the fact that FOT has never indirectly solicited, directed, transferred, spent or disbursed non-federal funds in connection with a federal election while acting as an agent of a federal candidate or campaign committee. Despite the allegations set forth in the Complaint, FOT has never engaged in any of the aforementioned activities involving non-federal funds while acting under the express or implied authorization of a federal candidate or campaign committee. It is an undisputed fact that MLC made a monetary contribution of \$25,000 to NONPAC, a Super PAC registered with the FEC and capable of making independent expenditure communications in connection with federal elections. In no way, however, was the funding for this particular donation provided to MLC by FOT and/or Speaker Tilley. (EXHIBIT #1, ¶5-10). Likewise, in no way did FOT coordinate or direct this contribution by MLC as an agent of Secretary of State Steelman, Steelman for Senate, or any other federal candidate or campaign committee. (*Id.* at ¶10-11). Nor did FOT direct MLC to earmark or channel its \$25,000 contribution to NONPAC for a specific purpose or use. (*Id.*). As such, FOT could not and did not act as an agent of Secretary of State Steelman, Steelman for Senate, or any other federal candidate or campaign committee in facilitating the making of specific independent expenditures by NONPAC. (*Id.* at ¶12). In light of the above facts, there is absolutely no basis upon which to assert that FOT has violated 11 C.F.R. § 300.61 by working as an agent of a federal candidate or campaign

committee to help such an individual or entity exercise indirect control over non-federal funds in connection with a federal election.

The overall hollowness of Complainant's allegation against FOT is likewise confirmed by the fact that FOT has never indirectly solicited, directed, transferred, spent or disbursed non-federal funds in connection with a federal election while acting *on behalf of* a federal candidate or campaign committee. Despite the accusations articulated in the Complaint, FOT has never engaged in any of the aforementioned activities involving non-federal funds while coordinating such conduct with a federal candidate, federal campaign committee, or any agents thereof. For example, in no way was the funding for MLC's \$25,000 donation to NONPAC coordinated by FOT and/or Speaker Tilley. (EXHIBIT #1, ¶5-10). Similarly, in no way was MLC's \$25,000 contribution to NONPAC made in cooperation, consultation or concert with, or at the request or suggestion of, either FOT or Speaker Tilley acting on behalf of Secretary of State Steelman or Steelman for Senate. (EXHIBIT #1, ¶10-11). In addition, in no way did FOT or Speaker Tilley direct MLC to facilitate the making of specific independent expenditures by NONPAC through any form of earmarking or channeling of its \$25,000 contribution for a particular use. (*Id.*). As such, it cannot be said that FOT acted on behalf of Secretary of State Steelman, Steelman for Senate, or any agents or intermediaries thereof by seeking to coordinate NONPAC's independent expenditure communications. (*Id.* at ¶12). In light of the above facts, there is absolutely no basis upon which to assert that FOT has violated 11 C.F.R. § 300.61 by working on behalf of or coordinating with a federal candidate or campaign committee to help such an individual or entity exercise indirect control over non-federal funds in connection with a federal election.

In sum, the present Complaint fails to present any reasonable evidence to support the allegation that FOT aided Secretary of State Steelman or Steelman for Senate in the improper

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exercise of control over non-federal funds in connection with a federal election. Specifically, there is absolutely no credible evidence to suggest that FOT worked as an agent of, or engaged in any form of coordination with, Secretary of State Steelman, her campaign committee, or any of its agents or intermediaries to direct, facilitate or fund MLC's \$25,000 contribution to NONPAC. Likewise, there is no evidentiary basis to conclude that either FOT or MLC (at the direction of FOT) in any way served as intermediaries between Secretary of State Steelman, Steelman for Senate, or any of its agents and NONPAC with regard to NONPAC's development of independent expenditure communications. As a result, there is absolutely no reason for the Commission to lend any credence to the present allegation raised against Respondent – it is nothing more than wild conjecture on the part of the Complainant and should be summarily dismissed.

III. Conclusion

As the information contained within this Response clearly sets forth, FOT has done nothing to run afoul of the legal requirements of the Act and its associated regulations. Rather, it is quite apparent that the Respondent has taken great pains to ensure that it is in full compliance with relevant campaign finance laws at both the state and federal level. (EXHIBIT #1, ¶2). Despite this fact, however, Complainant has used the present Complaint to make unsubstantiated allegations against FOT and to tarnish the political reputation of Speaker Tilley, his non-federal candidate committee, and each of the other named parties in the matter. As a result of these actions, the Commission should summarily dismiss the present Complaint against FOT and find that there is no reason to believe that Respondent has violated any of the statutory or regulatory provisions identified by the Complainant. In addition, given that the allegations contained within the present Complaint amount to nothing more than baseless conjecture, FOT hereby respectfully

requests that the Commission issue an Order obligating the Complainant to reimburse FOT for the attorneys' fees it has incurred in developing the present Response.

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Respectfully Submitted,



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